

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for Approval
of Indirect Transfer of Control of Qwest
Operating Companies to CenturyLink

**ORDER ON MIDCONTINENT'S
PETITION TO INTERVENE**

This matter is before Administrative Law Judge Barbara L. Neilson pursuant to the Notice and Order for Hearing issued by the Minnesota Public Utilities Commission ("Commission") on June 15, 2010.

The First Prehearing Order was issued in this matter on July 16, 2010. That Order set July 29, 2010, as the deadline for the filing of petitions to intervene as a party in this matter.

On August 6, 2010, Midcontinent Communications ("Midcontinent") filed a Petition to Intervene in this matter. The Second Prehearing Order issued in this matter on August 9, 2010, required that any objections to Midcontinent's Petition for Intervention be filed by August 12, 2010.

On August 12, 2010, CenturyLink and Qwest filed a response opposing Midcontinent's Petition to Intervene. No other objections were received to the Petition.

Based on all of the files and proceedings of the matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that Midcontinent Communications' Petition to Intervene as a party is DENIED.

Date: August 13, 2010.

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Midcontinent is a Competitive Local Exchange Carrier (CLEC) that is certified to provide facilities-based local exchange service in Minnesota, including service in the incumbent local service territory served by Qwest, and provides telecommunications service to residential and small- to medium-sized business customers in outstate Minnesota. In its Petition for Intervention, Midcontinent asserts that it is a party to an interconnection agreement with Qwest that expires on March 30, 2011. Midcontinent further alleges that it contacted Qwest on June 8, 2010, regarding the negotiation of a new interconnection agreement; Qwest told Midcontinent on June 18, 2010, that it would check on Midcontinent's request to extend the termination date of the parties' interconnection agreement; and Midcontinent has not had any communication from Qwest regarding the interconnection agreement since that time. According to the Petition, Midcontinent initially concluded after receiving notice of the proposed merger of Qwest and CenturyLink that it would not need to actively participate in this docket. Since that time, it alleges that "certain billing issues have arisen with Qwest" (without further description) and contends that "Midcontinent has become increasingly concerned about Qwest's lack of responsiveness regarding the status of the parties' interconnection agreement." Based on these issues, Midcontinent "seeks to intervene in the docket so that its concerns regarding working with Qwest, both today and after their merger, can be addressed." Midcontinent generally contends that "[t]he outcome of this proceeding will affect Midcontinent's particular interests, as distinguished from the interests of the general public" and that Midcontinent's interests "will not be adequately represented by any other party participating in this case," without further elaboration.

In its Petition, Midcontinent acknowledges that the deadline for filing petitions to intervene under the First Prehearing Order was July 29, 2010, but indicates that it is not asking for any modification of the previously-established schedule. It contends that its late-filed petition to intervene will not prejudice the rights of any party in this proceeding.

In their Opposition to Midcontinent's Petition to Intervene, CenturyLink and Qwest argue that the issues raised in the Petition are irrelevant to the issues involved in the current case. They maintain that allowing Midcontinent to intervene would impose unnecessary burdens on them to address individual issues that can be addressed elsewhere. Specifically, CenturyLink and Qwest contend that any issues involving renegotiation of Midcontinent's interconnection agreement with Qwest are governed by both federal law and the parties' current agreement, and are not relevant in this case. Section 5.2.2 of the parties' current interconnection agreement specifies:

Upon expiration of the term of this Agreement, this Agreement shall continue in full force and effect until superseded by a successor agreement in accordance with this Section 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the term, or the Agreement shall renew on a month to month basis. The date of this notice will be the starting point for the negotiation window under

Section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.

Under this provision, Qwest and CenturyLink contend that the first date upon which either Midcontinent or Qwest may seek negotiation of a new interconnection agreement is October 2, 2010 (160 days prior to the March 30, 2011, expiration date), and thus any issues associated with that renegotiation are not ripe at this time. In the event the parties are unable to negotiate a new interconnection agreement, Qwest and CenturyLink point out that 47 U.S.C. § 252 sets forth negotiation obligations, arbitration rights, and deadlines for implementing a new agreement, and the current agreement will remain in place until the date a successor agreement is approved by the Commission. They further assert that any individual “billing issues” experienced by Midcontinent are governed by the interconnection agreement and any applicable commercial agreement, tariff, or price list, and have nothing to do with the transaction at issue in this proceeding. Finally, they emphasize that the Petition was untimely filed and assert that Midcontinent provided no rationale for filing its Petition so late.

Paragraph 3 of the First Prehearing Order issued in this case stated that persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 by July 29, 2010. That rule sets forth certain standards that must be met in order to intervene as a party in a proceeding. It states in relevant part:

Subpart 1. **Petition.** Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall submit a timely written petition to intervene to the judge and shall serve the petition upon all existing parties and the agency. Timeliness will be determined by the judge in each case based on circumstances at the time of the filing. The petition shall show how the petitioner’s legal rights, duties, or privileges may be determined or affected by the contested case; shall show how the petitioner may be directly affected by the outcome or that petitioner’s participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate the petitioner’s statutory right to intervene if one should exist....

Subp. 3. **Order.** The judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the judge finds that the petitioner’s interest is adequately represented by one or more parties participating in the case. An order allowing intervention shall specify the extent of participation permitted the petitioner and shall state the judge’s reasons. A petitioner may be allowed to:

- A. file a written brief without acquiring the status of a party;
- B. intervene as a party with all the rights of a party; or

- C. intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

As noted in the First Prehearing Order, the Commission's Notice and Order for Hearing makes it clear that the ultimate issue to be addressed in this case is whether the proposed merger is in the public interest under Minn. Stat. § 237.23 and 237.74, subd. 12. That issue includes the following three issues:

- Whether the post-merger company would have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota;
- What impact the transaction would have on Minnesota customers and on competition in the local telecommunications market; and
- What impact the transaction would have on Commission authority.

The Administrative Law Judge concludes that Midcontinent's Petition to Intervene must be denied. The Petition was untimely filed and Midcontinent has not provided an adequate explanation for its failure to seek intervention in a timely fashion. In addition, Midcontinent has not convincingly demonstrated that the particular issues raised in its Petition--unspecified "billing issues" that have allegedly arisen between Midcontinent and Qwest, and Qwest's alleged failure to respond to Midcontinent's attempt to renegotiate its current interconnection agreement--are relevant to the issues raised in the current proceeding, or that this proceeding provides a proper forum for resolution of those issues.

Midcontinent may participate in the proceeding pursuant to Minn. R. 1400.6200, subp. 5, and 1400.7150, but it has not substantiated its need to participate as a party.

B. L. N.